APPENDIX.

CHARTER OF THE CITY OF CLEVELAND.

Chapter 1.

§ 2 Enumeration of Powers Not Exclusive.

The enumeration of particular powers by this charter shall not be held or deemed to be exclusive but, in addition to the powers enumerated herein, implied thereby or appropriate to the exercise thereof, the city shall have, and may exercise all other powers which, under the constitution and laws of Ohio, it would be competent for this charter specifically to enumerate.

Chapter 5.

§ 31 Clerk.

The council shall choose a clerk and such other officers and employes of its own body as are necessary. The clerk shall keep the records of the council and perform such other duties as may be required by this charter or by the council. All such officers and employes chosen by the council shall serve during the pleasure thereof.

§ 32 Legislative Procedure.

The council shall be the judge of the election and qualifications of its members. A majority of all the members elected shall be a quorum to do business, but a less number may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The affirmative vote of a majority of the members elected to the council shall be necessary to adopt any ordinance or resolution. The vote upon the passage of all ordinances, and upon the adoption of such resolutions as the council

by its rules shall prescribe, shall be taken by "yeas" and "nays" and entered upon the journal.

§ 33 Ordinance Enacted.

Ordinances and resolutions shall be introduced in the council only in written or printed form. All ordinances or resolutions, except ordinances making appropriations, shall be confined to one subject which shall be clearly expressed in the title, except as provided in the next section. Ordinances making appropriations shall be confined to the subjects of appropriation. No ordinance shall be passed until it has been read on three separate days unless the requirement of reading on three separate days has been dispensed with by a two-thirds vote of all the members of the council. The final reading shall be in full unless a written or printed copy of the measure shall have been furnished to each member of the council prior to such reading. The enacting clause of all ordinances passed by the council shall be "Be it ordained by the council of the city of Cleveland." The enacting clause of all ordinances submitted by the initiative shall be "Be it ordained by the people of the city of Cleveland."

Chapter 7.

Initiative and Referendum.

§ 49 The Initiative; Petition.

Any proposed ordinance may be submitted to the council by petition signed by at least five thousand (5,000) qualified electors of the city. All petition papers, circulated with respect to any proposed ordinance, shall be uniform in character and shall contain the proposed ordinance in full, and have printed thereon the names and addresses of at least five electors who shall be officially

regarded as filing the petition and shall constitute a committee of the petitioners for the purposes hereinafter named.

§ 50 Signing Petition.

Each signer of a petition shall sign his name in ink or indelible pencil, and shall place on the petition paper after his name his place of residence by street and number, or by other description sufficient to identify the place. The signatures to any such petition paper need not all be appended to one paper but to each such paper there shall be attached an affidavit by the circulator thereof stating the number of signers to such part of the petition and that the circulator believes each signature appended to the paper is the genuine signature of the person whose name it purports to be.

§ 51 Filing Petition.

All papers comprising a petition shall be assembled and filed with the clerk of the council as one instrument. Within ten (10) days from the filing of a petition the clerk shall ascertain whether it is signed by the required number of qualified electors. Upon the completion of his examination the clerk shall endorse upon the petition a certificate of the result thereof.

§ 52 Amending Petition.

If the clerk's certificate shows that the petition is insufficient he shall at once notify each member of the committee of the petitioners, hereinbefore provided for, and the petition may be amended at any time within fifteen (15) days from the date of the clerk's certificate of examination, by filing with the clerk an additional peti-

tion paper or papers in the same manner as provided for the original petition.

§ 53 Insufficiency of Petition.

Upon the filing of such an amendment the clerk shall, within ten (10) days thereafter, examine the amended petition and attach thereto his certificate of the result. If still insufficient, or if no amendment shall have been filed, the clerk shall file the petition in his offices and shall notify each member of the committee of that fact. The final finding of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose.

§ 54 Submitting Proposed Ordinances.

When the certificate of the clerk shows the petition to be sufficient, he shall submit the proposed ordinance to the council at its next regular meeting and the council shall at once read and refer the same to an appropriate committee, which may be the committee of the whole. Provision shall be made for public hearings upon the proposed ordinance before the committee to which it is referred. Thereafter the committee shall report the proposed ordinance to the council, with its recommendations thereon, not later than sixty days after the date on which the proposed ordinance was submitted to the council by the clerk.

§ 55 Action on Proposed Ordinance.

Upon receiving the proposed ordinance from the committee, the council shall at once proceed to consider it and shall take final action thereon within thirty (30) days from the date of such committee report. If the council reject the proposed ordinance, or pass it in a form different

from that set forth in the petition, the committee of the petitioners may require that it be submitted to a vote of the electors in its original form, or that it be submitted to a vote of the electors with any proposed change, addition or amendment, which was presented in writing either at a public hearing before the committee to which such proposed ordinance was referred, or during the consideration thereof by the council.

§ 56 Ordinance, Form, Voting.

When an ordinance proposed by petition is to be submitted to a vote of the electors the committee of the petitioners shall certify that fact and the proposed ordinance, in the form in which it is to be submitted to the clerk of the council within ten (10) days after the final action on such proposed ordinance by the council.

§ 57 Ordinance, Certification, Submission For Vote.

Upon receipt of the certificate and certified copy of the proposed ordinance, the clerk shall certify the fact to the council at its next regular meeting. If an election is to be held not more than six months nor less than thirty (30) days after the receipt of the clerk's certificate by the council, such proposed ordinance shall then be submitted to a vote of the electors. If no such election is to be held within the time aforesaid, the council may provide for submitting the proposed ordinance to the electors at a special election to be held not sooner than thirty days after the receipt of the clerk's certificate. If a supplemental petition, signed by five thousand (5,000) qualified electors, in addition to those who signed the original petition, be filed with the clerk asking that the proposed ordinance be submitted to the voters at a time indicated in such petition, the council shall provide for a special election at such time. The

sufficiency of any such supplemental petition shall be determined, and it may be amended, in the manner provided for original petitions for proposing ordinances to the council. If no other provision be made as to the time of submitting a proposed ordinance to a vote of the electors, it shall be submitted at the next election.

§ 58 Repealing Ordinances.

Proposed ordinances for repealing any existing ordinance or ordinances in whole or in part may be submitted to the council as provided in the preceding sections for initiating ordinances. Initiated ordinances adopted by the electors shall be published and may be amended or repealed by the council as in the case of other ordinances.

§ 59 The Referendum.

No ordinance passed by the council, unless it be an emergency measure, shall go into effect until forty (40) days after its final passage by the council. If at any time, within said forty (40) days a petition signed by electors equal in number to ten per cent (10%) of the total vote cast at the last preceding regular municipal election of the city be filed with the clerk of the council requesting that any such ordinance, or any specified part thereof, be repealed or submitted to a vote of the electors, it shall not become operative until the steps indicated herein have been taken. The petition shall be prepared and filed in the manner and form prescribed in the foregoing sections of this charter for an initiative petition for an ordinance.

§ 60 Petition for Referendum.

When such a petition is filed with the clerk of council he shall determine the sufficiency thereof in the manner provided in this charter for an initiative petition for an

ordinance. If the petition be found sufficient, or be rendered sufficient by amendment as provided in sections 52, 53 and 54 hereof, the clerk shall certify that fact to the council, which shall proceed to reconsider the ordinance. If, upon such reconsideration, the ordinance be not entirely repealed the council shall provide for submitting it to a vote of the electors, and in so doing the council shall be governed by the provisions of sections 57 and 66 hereof respecting the time of submission and manner of voting on ordinances proposed to the council by petition.

§ 61 Petition For Referendum, Text.

Referendum petitions need not contain the text of the ordinances, the repeal of which is sought, but they shall be subject in all other respects to the requirements for petitions submitting proposed ordinances to the council.

§ 62 Ordinances.

Ordinances submitted to the council, by initiative petition and passed by the council without change, or passed in an amended form and not required to be submitted to a vote of the electors by the committee of the petitioners, shall be subject to the referendum in the same manner as other ordinances.

ACKNOWLEDGMENT, AUGUST 29, 1967, BY MERCEDES COTNER OF RECEIPT OF INITIATIVE PETITION.

I, Mercedes Cotner, Clerk of Council of the City of Cleveland, hereby acknowledge receipt from the Vietnam Resolution Committee of an Initiative Petition entitled "Be it resolved by the people of the City of Cleveland that:

THE PRESIDENT OF THE UNITED STATES SHOULD BRING ALL AMERICAN TROOPS HOME FROM VIETNAM NOW SO THAT THE VIETNAMESE PEOPLE CAN SETTLE THEIR OWN AFFAIRS" consisting of 560 number of pages alleged to contain 9954 number of signatures.

MERCEDES COTNER,
City Clerk,
Clerk of Council.

LETTER, AUGUST 31, 1967, MERCEDES COTNER, CLERK OF COUNCIL, TO FRANKLIN ANDERSON, ET AL.

CITY OF CLEVELAND

CITY HALL

August 31, 1967

Franklin Anderson, 9701 Lamont Avenue, Cleveland, Ohio
Evelyn Blackburn, 1727 East 116th Place, Cleveland, Ohio
Kathleen Geathers, 1485 East 107th Street, Cleveland, Ohio
Rev. John Roberts, 6205 Lawn Avenue, Cleveland, Ohio
Auda Romine, 1330 West Boulevard, Cleveland, Ohio

Dear Ladies and Gentlemen:

I have received a number of petitions presented by you as electors representing the Vietnam Resolution Committee requesting that the question of United States participation in the Vietnam War activities be presented to Council of the City of Cleveland as an initiative petition.

Upon the advice of Bronis J. Klementowicz, Director of Law, and Daniel J. O'Loughlin, Chief Counsel, of the City of Cleveland, I must respectfully decline for legal reasons to process the petitions submitted by you as an initiative petition. Should you desire the return of the

documents submitted by you, they will be available upon request at my office.

Very truly yours,
MERCEDES COTNER,
Clerk of Council,
City of Cleveland.

MC:o

Xeroxed Copy: Mr. Jerry Gordon, Standard Building, Cleveland, Ohio

STIPULATION OF CITY CHARTER SECTIONS AND RESOLUTIONS ADOPTED BY CLEVELAND CITY COUNCIL.

Preliminary Statement.

It is agreed by and between the undersigned attorneys for the relators and respondent Mercedes Cotner that:

* * * * *

2. The resolutions adopted by City Council of Cleveland and quoted in pertinent part below are accurately quoted. Relevancy and materiality of these resolutions are in issue.

RESOLUTIONS PASSED BY CITY COUNCIL:

(1) Resolution Number 207-46, p. 107 of the City Record Adopted January 21, 1946.

> An emergency resolution memorializing the president of the United States as commander-in-chief of the armed forces of the United States to take proper steps to insure the return of members of the armed forces to their homes and families as rapidly as is consistent with the safeguarding of the integrity and security of the United States of America.

The principal resolving clause provides:

Be it resolved by the Council of the City of Cleveland:

That the president of the United States, as commander-in-chief of the armed forces of the United States, be and he hereby is memorialized to take proper steps to insure the return of members of the armed forces to their homes and families as rapidly as is consistent with the safeguarding of the integrity and security of the United States of America; especially to insure the immediate return of said members stationed in China and other non-hostile parts of the world.

(2) Resolution Number 511-50, p. 444 of the City Record Adopted March 8, 1950.

Resolution protesting the abduction of Greek children by the Communistic guerillas of Greece.

The principal resolving clause provides:

Be it resolved by the Council of the City of Cleveland:

That this Council: Protests the unlawful abduction and forcible detention of these innocent children, whose relatives and friends have contributed much to the culture and growth of this community.

(3) Resolution Number 888-51, p. 1160 of the City Record Adopted June 4, 1951.

An emergency resolution memorializing Congress, the President and Selective Service Director Lewis D. Hershey to disapprove and repeal the regulation deferring college students who attain certain grades, or pass special aptitude tests, from military service.

The principal resolving clause provides:

Be it resolved by the Council of the City of Cleveland:

That this Council hereby memorializes Congress, the President of the United States, and Selective Service Director Lewis D. Hershey to disapprove and repeal the regulation deferring college students who attain certain grades, or pass special aptitude tests, from military service.

(4) Resolution Number 2412-56, p. 2161 of the City Record Adopted October 31, 1956.

A resolution expressing support for the Hungarian people in their struggle against Communism.

The principal resolving clause provides:

Be it resolved by the Council of the City of Cleveland:

That this Council express and record its support for the Hungarian people in their struggle against Communism and offer the hope that soon Hungary will take its rightful place among the free nations of the world.

(5) Resolution Number 619-66, p. 604 of the City Record Adopted March 14, 1966.

The principal resolving clause provides:

Be it resolved by the Council of the City of Cleveland:

That this Council records its support for the Byelorussian People in their struggle against Communism and expresses its hope that the Republic of Byelorussia will take its rightful place among the free nations of the world.

JERRY GORDON,
Attorney for Relators.

DANIEL J. O'LOUGHLIN,
Chief Counsel,
Attorney for Respondent
Mercedes Cotner

OPINION OF THE SUPREME COURT OF OHIO, STATE EX REL. RHODES vs. BD. OF ELECTIONS, 12 OHIO ST. 2d 4 (10/4/67).

Per Curiam. This is an action in mandamus originating in this court. By this action, relators seek to compel the respondent Board of Elections of Lake County to place the following resolution proposed by initiative petition on the ballot:

"Be it resolved by the people of the Village of Willoughby Hills, Ohio, that:

"The President of the United States should bring all American troops home from Vietnam now so that the Vietnamese people can settle their own affairs."

Section 1f, Article II, of the Ohio Constitution, provides for municipal initiative and reads as follows:

"The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which *such municipalities may* now or hereafter *be authorized by law to control by legislative action*; such powers shall be exercised in the manner now or hereafter provided by law." (Emphasis added.)

The initiative petition in the instant case does not contain any question which a municipality is authorized by law to control by legislative action.

Writ denied.

TAFT, C. J., ZIMMERMAN, MATTHIAS, O'NEILL, HERBERT, SCHNEIDER and BROWN, JJ., concur.

FROM RELATORS' PETITION FOR WRIT OF MANDAMUS.

10. Relators say that the action of the respondent Clerk of Council in rejecting the said initiative, in refusing to count the signatures to the petition and in refusing to ascertain their sufficiency so as to certify the

issue to City Council, is arbitrary, unreasonable, illegal, and in violation of the City Charter of Cleveland, the Constitution of Ohio and the Constitution of the United States.

11. Relators have no plain and adequate remedy in the ordinary course of the law, and unless the writ prayed for herein is issued, relators and those who signed the said petitions will be deprived unjustly, arbitrarily and illegally of their rights under the City Charter of Cleveland, the Constitution of Ohio and the Constitution of the United States to have the said initiated resolution submitted to a vote of City Council of Cleveland as petitioned for, and, in the event of rejection by City Council, to the voters of the City of Cleveland.

FROM RELATORS' BRIEF TO THE SUPREME COURT OF OHIO, PAGE 20.

III. *Denial of relators' right to place the said resolution before Cleveland City Council, and in the event of Council's rejection thereof then before the voters of the City of Cleveland, would violate the Equal Protection clause of Amendment XIV to the Constitution of the United States.*

[Text Omitted.]

FROM RELATORS' REPLY BRIEF, PAGE 1.

THE 14TH AMENDMENT ISSUE

In their main brief, relators advanced as a central argument the contention that deprival of Equal Protection of the Laws was the unavoidable consequence of respondent's arbitrary action in refusing to process relators' initiative petition. The Court is respectfully urged to note respondent's cursory reply to this contention (p. 20, respondent's brief). The issue is dealt with in a single para-

graph where the claim is made that the resolutions adopted by Cleveland City Council on national and world affairs "are neither relevant or material."

[Remainder of Text Omitted.]

RELATORS' MOTION FOR RECONSIDERATION.

Relators respectfully move the Court for an order granting reconsideration of the above cause for the reason that momentous constitutional issues are involved, particularly with respect to the Equal Protection of the Laws Clause of Amendment XIV of the United States Constitution, issues not dealt with by the Court in its opinion in *State, ex rel. Rhodes v. Board of Elections of Lake County,* 12 Ohio St. 2d 4. See *Cox v. Louisiana,* 379 U. S. 536 (1965).

DECISION AND ORDER OF THE SUPREME COURT OF OHIO, CASE NO. 41243.

(Entered October 6, 1967.)

This cause originated in this Court upon the filing of a petition for a writ of Mandamus by the Relators and was heard in the manner prescribed by law. On consideration thereof, the writ is hereby denied on authority of *State, ex rel. Rhodes, v. Board of Elections of Lake County,* 12 Ohio St. 2d 4.

It is further ordered that the Respondents recover from the Relators costs expended in this Court.

ORDER OF THE SUPREME COURT OF OHIO DENYING REHEARING, CASE NO. 41243.

(Entered October 25, 1967.)

It is ordered by the court that rehearing in this case is denied.